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7 **UNITED STATES DISTRICT COURT**
8 **WESTERN DISTRICT OF WASHINGTON**
AT SEATTLE

9 **GLOBAL BUILDING PRODUCTS**
10 **LTD.; GLOBAL BUILDING**
11 **PRODUCTS (12) LTD.; GLOBAL**
12 **BUILDING PRODUCTS (17) LTD. and**
13 **FSR TREATMENT, INC., all Canadian**
14 **corporations,**

15 Plaintiffs,

16 v.

17 **CHEMCO, INC.; CHEMCO**
18 **ACQUISITION CORPORATION; and**
19 **VERDANT WOOD TECHNOLOGIES,**
20 **INC., all Washington corporations,**

21 Defendants.

Case No.

PLAINTIFFS' MEMORANDUM IN
SUPPORT OF PETITION FOR ORDER
TO CONFIRM ARBITRATION
AWARD

22 **I. INTRODUCTION**

23 A June 8, 2012 Final Award was issued in an international arbitration proceeding
24 administered by the American Arbitration Association's International Centre for Dispute
25 Resolution entitled: *Global Building Products, Ltd, et. al. v. Chemco, Inc., et. al.*, Case No. 50
26 133 T 00265 11. See Declaration of Randolph C. Foster in Support of Plaintiffs' Petition for
Order to Confirm Arbitral Award (hereinafter "Foster Decl."), Ex.16. Plaintiffs have filed a
petition under Chapter II of the Federal Arbitration Act ("FAA"), 9 U.S.C. § 201 *et seq.*, and the

PLAINTIFFS' MEMORANDUM IN SUPPORT OF PETITION FOR ORDER TO
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Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 21 U.S.T. 2517, T.I.A.S. No. 6997, 300 U.N. 38 (the "Convention"), for confirmation of the Final Award.

II. BACKGROUND FACTS

Plaintiffs are Canadian corporations with their principal place of business in British Columbia. Defendants are Washington corporations with their principal place of business in Ferndale, Washington. *See Foster Decl.*, ¶ 2. By written agreements dated December 1, 2007, the parties entered into a transaction that gave rise to certain disputes that were resolved in the arbitration that is the subject of the Final Award. The parties' transaction is referred to as the "2007 Transaction" in the Interim Award. *See Foster Decl.*, Ex. 15 at p. 3.

In 2007 Transaction agreements, the parties agreed as follows:

9. DISPUTE RESOLUTION:

Any dispute, claim or controversy arising out of or relating to the execution, interpretation and performance of this Agreement shall be submitted to binding arbitration. The arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The place of arbitration shall be Bellingham, Washington, or such other place as may be agreed upon by the Parties. The Parties shall attempt to agree upon one arbitrator, but if they are unable to agree, each Party shall appoint an arbitrator and the two arbitrators so appointed shall select a third arbitrator. [remainder of this section of the Exclusive License omitted]

Foster Decl. ¶ 11, Exclusive License Agreement, Ex. 13.

10. DISPUTE RESOLUTION:

Dispute Resolution. All disputes arising under this Agreement shall be resolved in the manner prescribed in the Exclusive License Agreement for resolving disputes.

Foster Decl. ¶ 11, Toll Manufacturing Agreement, Ex. 14.

On April 25, 2011, Plaintiffs filed a Demand for Arbitration with the American Arbitration Association ("AAA"), invoking the parties' arbitration agreement. *See Foster Decl.*, Ex. 1. Defendants filed an answer and counterclaim. *See Foster Decl.*, Exs. 3 and 4. Plaintiffs filed a response to Defendants' counterclaims. *See Foster Decl.*, Ex. 5.

1 The arbitration was administered by the AAA's International Centre for Dispute
2 Resolution ("ICDR"). *See* Foster Decl., Ex. 2. The ICDR confirmed the parties' joint
3 nomination of Thomas Brewer as arbitrator. *See* Foster Decl., Ex. 6. A number of procedural
4 orders were issued by the Arbitrator concerning administration of the arbitration and hearing.
5 *See e.g.*, Foster Decl., Exs. 7, 8, and 10.

6 Prior to the completion of the arbitration hearing, both parties filed their respective initial
7 itemized statements of requested relief. *See* Foster Decl., Exs. 11 and 12.

8 An evidentiary hearing in the arbitration was held in Bellingham, Washington from
9 January 23-27, 2012. Live testimony was provided at the hearing by numerous witnesses. Both
10 parties also submitted lengthy pre- and post-hearing submissions. *See* Foster Decl., Ex. 15 at 5-6

11 On April 19, 2012, the Arbitrator issued a comprehensive 25-page Interim Award.
12 addressing virtually all of the various substantive issues raised by the parties other than the issue
13 of the award of attorney's fees, arbitration expenses, arbitrator's fees, and arbitration
14 administrative fees. Questions regarding the allocation or award of attorneys fees and related
15 arbitration expenses were expressly reserved for resolution in the Final Award. *See* Foster Decl.,
16 Ex. 8 ¶ 10, and Ex. 15 at pp. 24-25.

17 The June 8, 2012 Final Award awarded both economic and non-economic relief, and
18 included specific equitable relief. *See* Foster Decl., Ex. 16.

19 The economic relief in the Final Award includes an award to Plaintiff FSR Treatment
20 Inc. of \$1.2 million (Canadian) as lost profits and \$780,449.40 (U.S.) to all the Plaintiffs for
21 arbitration related expenses, including attorneys fees. The Final Award provides that post-
22 Award interest at the rate of 12% per annum is to accrue from the date of the Final Award on all
23 amounts awarded. *See* Foster Decl., Ex. 16.

24 As of the date of this filing, Defendants have not paid the amount awarded for fees and
25 costs. Foster Decl. ¶ 14.

1 **III. ARGUMENT**

2 **A. The Convention on the Recognition and Enforcement of Foreign Arbitral**
3 **Awards Governs the Court's Review of the ICC's Final Award.**

4 The intended purpose of the Convention is to “encourage the recognition and
5 enforcement of commercial arbitration agreements in international contracts and to unify the
6 standards by which agreements to arbitrate are observed and arbitral awards are enforced in the
7 signatory countries.” *Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 520 n.15, 94 S. Ct. 2449
8 (1974). Congress ratified the Convention in 1970 and implemented it by passing Chapter II of
9 the Federal Arbitration Act. *See Glencore Grain Rotterdam B.V. v. Shivnath Rai Harnarain Co.*,
10 284 F.3d 1114, 1119-1120 (9th Cir. 2002); *see also* 9 U.S.C. § 201 (“The Convention on the
11 Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958, shall be enforced in
12 United States courts in accordance with this chapter.”).¹

14 An arbitral award “falls under” the Convention if: (1) the award arises out of a legal
15 relationship; (2) the relationship is commercial in nature; and (3) the relationship is not entirely
16 domestic in scope. *Minister of Defense of Islamic Republic v. Gould, Inc. (Gould I)*., 887 F.2d
17 1357, 1362 (9th Cir. 1989); *see also* 9 U.S.C. § 202. All three requirements are satisfied here.
18 The agreements that comprise the 2007 Transaction embody a “legal relationship.” Further, the
19 subjects of the parties’ 2007 Transaction—the sale of Chemco’s cedar roofing treatment business
20 and the manufacture of fire retardant chemical for use in treating cedar roofing —are
21 indisputably commercial in nature. The third requirement is also met because Plaintiffs are all
22 Canadian entities. The Convention applies here because this arbitration arises from a
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25 ¹ Canada is also a party to the Convention. *See* W. LAWRENCE CRAIG ET AL.,
26 INTERNATIONAL CHAMBER OF COMMERCE ARBITRATION § I-19 (2d Ed. 1990). *See also*
<http://193.5.93.81/amc/en/arbitration/ny-convention/parties.html>

1 commercial dispute in which one of the parties to a contract is from outside the United States.
2 *See Industrial Risk Insurers v. M.A.N. Gutehoffnungshutte GmbH*, 141 F.3d 1434, 1441 (11th
3 Cir. 1998) (“[A]n arbitral award made in the United States, under American law, falls within the
4 purview of the [Convention]--and is thus governed by Chapter 2 of the FAA--when one of the
5 parties to the arbitration is domiciled or has its principal place of business outside of the United
6 States.”); *see also Wartsila Fin. OY v. Duke Capital LLC*, 518 F.3d 287 (5th Cir. 2008)
7 (affirming district court’s confirmation of ICC arbitral award where arbitration was conducted in
8 Houston, Texas).

10 **B. Chapter II of the FAA Vests this Court With Subject Matter Jurisdiction to**
11 **Confirm the Arbitral Award.**

12 This Court has jurisdiction to confirm the Final Award pursuant to 9 U. S. C. §
13 203, which provides that “[a]n action or proceeding falling under the Convention shall be
14 deemed to arise under the laws and treaties of the United States” and the “[d]istrict courts of the
15 United States . . . shall have original jurisdiction over such an action or proceeding, regardless of
16 the amount in controversy.”

18 **C. This Court Has Personal Jurisdiction Over Defendants and, Therefore, May**
19 **Certify the Final Award and Enter Judgment.**

20 This Court enjoys personal jurisdiction over the Defendants because they are Washington
21 corporations and their principal place of business is in Ferndale, Washington. Yet another basis
22 for this Court’s personal jurisdiction over Defendants is that the agreed place of arbitration was
23 in Bellingham, Washington. *See* FAA Ch. I, § 9, 9 U.S.C. § 9 (“[A]pplication [to confirm the
24 arbitral award] may be made to the United States court in and for the district within which such
25 award was made. Notice of the application shall be served upon the adverse party, and
26

1 thereupon the court shall have jurisdiction of such party as though he had appeared generally in
2 the proceeding.).

3 **D. Venue in this Court is Proper.**

4 Under 9 U.S.C. § 204, venue to confirm an arbitral award falling under the Convention is
5 proper in: (1) any court in which an action could be brought “save for the arbitration agreement”;
6 or (2) a court in the same locale as the place designated in the agreement as the place of
7 arbitration. Defendants’ principal place of business is in Ferndale, Washington and the parties’
8 arbitration agreement, and the Arbitrator’s award, states that the place of arbitration is
9 Bellingham, Washington. *See* Foster Decl. Ex. 15 at p. 25 (In the Interim Award, the Arbitrator
10 stated: “I hereby certify that, for purposes of Article 1 of the New York Convention of 1958, on
11 the Recognition and Enforcement of Foreign Arbitral Awards, this Interim Award was made in
12 Bellingham, Washington USA.”)

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15 **E. The Final Award Should Be Confirmed and Judgment Entered.**

16 The U.S. Supreme Court observed that the Convention embodies a strong “international
17 policy favoring commercial arbitration,” *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth,*
18 *Inc.*, 473 U.S. 614, 639 (1985), and that the Convention’s purpose “and the principal purpose
19 underlying American adoption and implementation of it, was to encourage the recognition and
20 enforcement of commercial arbitration agreements in international contracts and to unify the
21 standards by which agreements to arbitrate are observed and arbitral awards are enforced in the
22 signatory countries.” *Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 520 n.15 (1974).²

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25 ² Strong federal policy supports the enforcement of both domestic and international
26 arbitration agreements and arbitral awards. “Congress enacted the FAA [Federal Arbitration
Act] ‘[t]o overcome judicial resistance to arbitration,’ and to declare “a national policy favoring
(continued . . .)

1 Where parties include an arbitration clause in their agreement, there is a “strong federal
2 policy in favor of enforcing [it].” *Dean Witter Reynolds Inc. v. Byrd*, 470 U.S. 213, 217, 105 S.
3 Ct. 1238 (1985). “Confirming an arbitration award is a summary proceeding that merely makes
4 what is already a final arbitration award a judgment of the court.” *Yusuf Ahmed Alghanim &*
5 *Sons, W.L.L. v. Toys "R" Us, Inc.*, 126 F.3d 15, 23 (2d Cir. 1997) (internal quotation omitted).
6
7 The Ninth Circuit has observed that a “district court has little discretion” and must typically
8 confirm an award under the New York Convention. *Ministry of Defense of Iran v. Gould Inc.*
9 (*Gould II*), 969 F.2d 764, 770 (9th Cir. 1992).

10 IV. CONCLUSION

11 Plaintiffs request that the Court confirm the June 8, 2012 Final Award in all respects. In
12 addition, Plaintiffs request that a judgment be entered by the Court against the Defendants
13 incorporating the Final Award in its entirety, including both the non-economic and economic
14 relief awarded by the Arbitrator. A proposed form of judgment is attached to the Plaintiffs’
15 Petition.
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22 (. . . continued)
23 arbitration” of claims that parties contract to settle in that manner.”” *Vaden v. Discover Bank*,
24 129 S. Ct. 1262, 1271 (2009) (second brackets in original) (*quoting Buckeye Check Cashing, Inc.*
25 *v. Cardegna*, 546 U.S. 440, 443 (2006); *Preston v. Ferrer*, 552 U.S. 346, 353 (2008)). “[T]he
26 emphatic federal policy in favor of arbitral dispute resolution . . . applies with special force in the
field of international commerce.” *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473
U.S. 614, 631 (1985) (footnote omitted).

1 DATED: June 12, 2012.

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**PLAINTIFFS' MEMORANDUM IN SUPPORT OF PETITION FOR ORDER TO
CONFIRM ARBITRATION AWARD - 8**

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on June 12, 2012, I electronically filed the foregoing with the Clerk of the
3 Court using the CM/ECF system and am in the process of process serving same on all
4 defendants.

5 DATED: June 12, 2012 at Seattle, Washington.

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